

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

**Rev. Rul. 96-60, page 4.**

**LIFO; price indexes; department stores.** The October 1996 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, October 31, 1996.

### EMPLOYEE PLANS

**Rev. Proc. 96-56, page 11.**

**Section 457 "No Rule" revenue procedure.** This procedure provides that the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations) will not issue advance ruling letters on the tax effect of the provisions of the Small Business Job Protection Act (P. L. 104-188), affecting plans described in section 457 of the Code. Rev. Proc. 96-3 amplified.

**Notice 96-63, page 8.**

**Notice requesting comments on proposed guidance relating to section 457 plans.** This notice invites public comment on possible changes to procedures relating to requests for private letter rulings under section 457 of the Code.

**Notice 96-64, page 8.**

**Qualified retirement plans; effective dates; governments and tax-exempt organizations.** The effective dates of certain nondiscrimination regulations for plans

maintained by governments and tax-exempt organizations, is being extended. In addition, guidance on several related tax matters, including application of the aggregation rules under section 414(b) and (c) for such plans, is provided.

### EXEMPT ORGANIZATIONS

**Announcement 96-123, page 13.**

A list is given of organizations now classified as private foundations.

**Announcement 96-128, page 14.**

A list is provided of organizations that no longer qualify as organizations to which contributions are deductible under section 170 of the Code.

### ADMINISTRATIVE

**Notice 96-53, page 5.**

**Medical savings accounts.** This notice provides certain basic information about medical savings accounts. It does not attempt to cover all of the specific rules that apply.

**Announcement 96-129, page 14.**

The 1996 update of Publication 938, Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs)), is now available on the IRS Electronic Bulletin Board (IRP-BBS).

## **Mission of the Service**

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the

quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency and fairness.

## **Statement of Principles of Internal Revenue Tax Administration**

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

# Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semi-annually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations,

court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

## **Part I.—1986 Code.**

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

## **Part II.—Treaties and Tax Legislation.**

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

## **Part III.—Administrative, Procedural, and Miscellaneous.**

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

## **Part IV.—Items of General Interest.**

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes an index for the matters published during the preceding month. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semi-annual period, respectively.

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# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

**LIFO; price indexes; department stores.** The October 1996 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, October 31, 1996.

## Rev. Rul. 96-60

The following Department Store Inventory Price Indexes for October 1996 were issued by the Bureau of Labor Statistics on November 14, 1996. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory

methods for tax years ended on, or with reference to, October 31, 1996.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups—soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

### BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS (January 1941 = 100, unless otherwise noted)

Groups	Oct. 1995	Oct. 1996	Percent Change from Oct. 1995 to Oct. 1996 <sup>1</sup>
1. Piece Goods . . . . .	508.6	561.0	10.3
2. Domestics and Draperies . . . . .	664.7	641.0	-3.6
3. Women's and Children's Shoes . . . . .	647.5	661.8	2.2
4. Men's Shoes . . . . .	930.1	920.1	-1.1
5. Infants' Wear . . . . .	633.8	626.4	-1.2
6. Women's Underwear . . . . .	522.6	536.8	2.7
7. Women's Hosiery . . . . .	290.7	285.7	-1.7
8. Women's and Girls' Accessories . . . . .	558.3	557.5	-0.1
9. Women's Outerwear and Girls' Wear . . . . .	430.5	417.5	-3.0
10. Men's Clothing . . . . .	621.1	621.9	0.1
11. Men's Furnishings . . . . .	572.1	581.7	1.7
12. Boys' Clothing and Furnishings . . . . .	501.9	490.7	-2.2
13. Jewelry . . . . .	1014.3	1043.6	2.9
14. Notions . . . . .	782.3	797.3	1.9
15. Toilet Articles and Drugs . . . . .	868.7	901.4	3.8
16. Furniture and Bedding . . . . .	666.4	667.5	0.2
17. Floor Coverings . . . . .	567.4	585.2	3.1
18. Housewares . . . . .	801.2	808.1	0.9
19. Major Appliances . . . . .	248.9	246.2	-1.1
20. Radio and Television . . . . .	80.6	77.8	-3.5
21. Recreation and Education <sup>2</sup> . . . . .	114.0	111.8	-1.9
22. Home Improvements <sup>2</sup> . . . . .	122.1	125.6	2.9
23. Auto Accessories <sup>2</sup> . . . . .	107.0	107.4	0.4
Groups 1-15: Soft Goods . . . . .	603.0	603.4	0.1
Groups 16-20: Durable Goods . . . . .	469.3	467.7	-0.3
Groups 21-23: Misc. Goods <sup>2</sup> . . . . .	113.9	112.9	-0.9
Store Total <sup>3</sup> . . . . .	556.9	556.1	-0.1

<sup>1</sup>Absence of a minus sign before percentage change in this column signifies price increase.

<sup>2</sup>Indexes on a January 1986=100 base.

<sup>3</sup>The store total index covers all departments, including some not listed separately, except for the following: candy, foods, liquor, tobacco, and contract departments.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Stan Michaels of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Michaels on (202) 622-4970 (not a toll-free call).

## Part III. Administrative, Procedural, and Miscellaneous

### Medical Savings Accounts

#### Notice 96-53

The Health Insurance Portability and Accountability Act of 1996 added section 220 to the Internal Revenue Code to permit eligible individuals to establish medical savings accounts (MSAs) under a pilot project beginning on January 1, 1997.

This notice provides certain basic information about MSAs. It does not attempt to summarize all of the specific rules that apply.

The notice is divided into seven parts. Part I of the notice explains what MSAs are and who can have them. Part II describes how MSAs can be established. Parts III and IV cover contributions to MSAs and distributions from MSAs. Part V deals with the statutory limit on the number of taxpayers who can use MSAs. Part VI relates to information reporting by MSA trustees and custodians, and Part VII addresses other matters relating to MSAs.

#### ***I. What Are MSAs and Who Can Have Them?***

##### **Q-1. What is an MSA?**

A-1. An MSA is a tax-exempt trust or custodial account established for the purpose of paying medical expenses in conjunction with a high-deductible health plan. A number of the rules that apply to MSA are similar to rules that apply to individual retirement arrangements (IRAs). For example, like an IRA, an MSA is established for the benefit of an individual, and is "portable". Thus, if the individual is an employee who later changes employers or leaves the work force, the MSA does not stay behind with the former employer, but stays with the individual. However, because MSAs differ from IRAs in some important respects, taxpayers cannot use an IRA as an MSA, and cannot combine an IRA and an MSA in a single account.

##### **Q-2. Who is eligible to have an MSA?**

A-2. Two types of individuals are eligible to establish an MSA:

(1) an employee (or spouse of an employee) of a "small employer" that maintains an individual or family "high-deductible health plan" covering that individual (employee or spouse); or

(2) a self-employed person (or the spouse of a self-employed person) main-

taining an individual or family "high-deductible health plan" covering that individual (self-employed person or spouse).

See A-6 and A-7 for additional limitations on who may establish MSAs.

##### **Q-3. What is a "small employer" for MSA purposes?**

A-3. An employer is a "small employer" for a calendar year if the employer employed an average of 50 or fewer employees on business days during either of the two preceding calendar years. Special rules apply to new employers, consolidated groups, and certain employers that have added employees. See Internal Revenue Code section 220(c)(4).

##### **Q-4. What is a "high-deductible health plan" that makes someone eligible for an MSA?**

A-4. A "high-deductible health plan" is a health plan that: (1) has an annual deductible of at least \$1,500, and not more than \$2,250, for individual (self-only) coverage; or (2) has an annual deductible of at least \$3,000, and not more than \$4,500, for family coverage (coverage of more than one individual). In addition, the annual out-of-pocket expenses under the plan cannot exceed \$3,000 for individual coverage and \$5,500 for family coverage. Out-of-pocket expenses include deductibles, copayments and other amounts the participant must pay for covered benefits, but do not include premiums.

##### **Q-5. Can a health maintenance organization (HMO) offer a high-deductible health plan?**

A-5. Yes. A high-deductible health plan may be offered by a variety of entities, including insurance companies and health maintenance organizations (HMOs).

##### **Q-6. What kind of other health coverage makes an individual ineligible for an MSA?**

A-6. Except as described in A-7, an individual is ineligible for an MSA if the individual is covered under a health plan (whether as an individual, spouse, or dependent) that is not a high-deductible health plan (including being covered as a beneficiary under Medicare) as well as under a high-deductible health plan.

##### **Q-7. What other kinds of health coverage may an individual maintain without losing eligibility for an MSA?**

A-7. An individual remains eligible for an MSA if, in addition to a high-

deductible health plan, the individual has coverage (whether provided through insurance or otherwise) for accidents, disability, dental care, vision care, long-term care, insurance for a specified disease or illness, insurance that pays a fixed amount per day (or other period) of hospitalization; or insurance under which substantially all of the coverage provided relates to liabilities from workers' compensation laws, torts, or ownership or use of property (such as automobile insurance).

##### **Q-8. Are MSAs allowed under a cafeteria plan?**

A-8. A high-deductible health plan (described in A-4) can be provided as part of a cafeteria plan. Such a high-deductible health plan can be used in conjunction with an MSA. However, the MSA must be established outside the cafeteria plan, because a cafeteria plan is not permitted to provide for contributions to an MSA. Outside of the cafeteria plan context, an employee will not be subject to taxation merely because the employee has a choice between employer contributions to an MSA and other employer-provided accident or health coverage.

#### ***II. How Can An MSA Be Established?***

##### **Q-9. How does an eligible individual establish an MSA?**

A-9. Beginning January 1, 1997, any eligible individual (as described in A-2) can establish an MSA with a qualified MSA trustee or custodian, in much the same way that individuals establish IRAs with qualified IRA trustees or custodians. No permission or authorization from the Internal Revenue Service (IRS) is necessary to establish an MSA.

##### **Q-10. Who is a qualified MSA trustee or custodian?**

A-10. Any insurance company or any bank (including a similar financial institution as defined in Internal Revenue Code section 408(n)) can be a MSA trustee or custodian. In addition, any other persons already approved by the IRS to be trustees or custodians of IRAs are automatically approved to be MSA trustees or custodians. Persons other than banks, insurance companies, or previously approved IRA trustees or custodians may request approval to be a trustee or custodian in accordance with the procedures set forth in Treasury Regulation § 1.408-2(e) (relating to IRA nonbank trustees). An eligible indi-

vidual who is an employee may establish a MSA without any involvement of the employer.

Q-11. How does an individual or small employer sign up for or enroll in the MSA pilot project?

A-11. Neither individuals nor small employers "sign up for", "apply for", or otherwise "enroll in" the MSA pilot project. Rather, as described in A-9, eligible individuals or small employers can proceed to arrange for the establishment of MSAs with qualified trustees or custodians without awaiting permission or authorization from the IRS. (Sections V and VI, below, give further information on the limits Congress imposed on the number of taxpayers who can contribute to MSAs, and reporting by trustees and custodians.)

### **III. Contributions to MSAs.**

Q-12. Who may contribute to an MSA?

A-12. In the case of an MSA established by an employee or by the spouse of an employee, the account holder (employee or spouse, respectively) may contribute to the MSA. Alternatively, the employee's employer may contribute to the employee's or spouse's MSA. However, if an employer makes a contribution to an MSA for a given year, the account holder of that MSA may not contribute to any MSA for that year. (Additional restrictions apply if an employee's spouse receives MSA contributions. See Internal Revenue Code section 220(b)(5)(B).)

In the case of an MSA established by a self-employed individual or spouse, the account holder (the self-employed individual or the spouse, respectively) may contribute to the MSA.

Q-13. How much may be contributed to an MSA?

A-13. The maximum annual amount permitted to be contributed to an MSA for a year is (1) for high-deductible individual coverage, 65 percent of the deductible; and (2) for high-deductible family coverage, 75 percent of the deductible. The same annual contribution limit applies whether the contributions are made by an employee, an employer, or a self-employed person. The annual contribution limit is the sum of the limits determined separately for each month, based on status, eligibility and health plan coverage as of the first day of the month. Although the annual limitation is calculated using monthly data, the contribution for the year can be

made in one or more payments, at the convenience of the individual or the employer, at any time within the deadline described in A-15.

For example, assume that an individual has self-only coverage under a high-deductible health plan with an annual deductible of \$1,800. The annual contribution limit is 65 percent of \$1,800 (\$1,170), and the monthly contribution limit is \$97.50 (\$1,170/12). Assume further that the individual is an eligible individual for each of the first eight months of the year, but not thereafter. In that case, the contribution limit for the year is \$780 (8 x \$97.50).

Q-14. In what form may contributions be made to an MSA?

A-14. Contributions to an MSA must be made in cash. For example, contributions may not be made in the form of stock or other property.

Q-15. What is the tax treatment of an eligible individual's MSA contributions?

A-15. Contributions by an eligible individual to an MSA (which are subject to the limits described in A-13) are deductible in computing adjusted gross income. Accordingly, the contributions are deductible whether or not the eligible individual itemizes deductions. The tax deduction for an employee or the employee's spouse, however, cannot exceed the individual's compensation attributable to the employer that sponsors the high-deductible plan covering the individual. For a self-employed individual, in addition to the contribution limits described in A-13, the tax deduction cannot exceed the individual's earned income from the trade or business with respect to which the high-deductible plan is established. In addition, the statute denies a tax deduction to any individual who may be claimed as a dependent on another taxpayer's return.

Q-16. What is the tax treatment of employer contributions to an eligible individual's MSA?

A-16. Employer contributions to an eligible individual's MSA (which are limited as described in A-13) are excludable from gross income, are not subject to withholding for income tax, and are not subject to other employment taxes (i.e., Social Security and Medicare taxes (FICA), federal unemployment tax (FUTA) or railroad retirement tax).

Q-17. What is the tax treatment of earnings on amounts in an MSA?

A-17. Earnings on amounts in an MSA are not taxable prior to distribu-

tion from the MSA. See A-21 regarding the taxation of distributions.

Q-18. When is the deadline for an eligible individual to make contributions to an MSA for any particular year?

A-18. An eligible individual may make MSA contributions for a particular tax year no later than the time prescribed by law (without extensions) for filing the individual's federal income tax return for that year. As in the case of IRAs, for calendar year taxpayers, generally the deadline for contributions to an MSA is April 15 following the year for which the contributions are made.

Q-19. What happens when MSA contributions exceed the amount that may be deducted or excluded from gross income?

A-19. Contributions by individuals are not deductible to the extent that they exceed the limits in A-13 or A-15 or if they are made by an individual who is not an eligible individual. Contributions by employers are included in gross income to the extent that they exceed the limits in A-13 or if they are made on behalf of an individual who is not an eligible individual. In addition, under the statute an excise tax of six percent for each tax year is imposed on the account holder for these excess individual and employer contributions. If, however, the excess contributions for a tax year and the net income attributable to these excess contributions are paid to the account holder before the last day prescribed by law, including extensions, for filing the account holder's tax return for the tax year, then (1) the excise tax does not apply; (2) the distribution of the excess contributions is not taxed; and (3) the net income attributable to the excess contributions is included in the account holder's gross income for the tax year in which the distribution is made.

### **IV. Distributions From MSAs.**

Q-20. When is an individual permitted to receive distributions from an MSA?

A-20. An individual is permitted to receive a distribution from an MSA at any time.

Q-21. How are distributions from an MSA taxed?

A-21. Distributions from an MSA are excludable from gross income if used for medical expenses of the MSA account holder and the account holder's family, with certain exceptions, and are includible in gross income if used for

any other purpose. Under one such exception, in any year for which an MSA contribution is made, distributions from an MSA of that account holder to pay medical expenses are included in gross income if, for the month in which the expense was incurred, the individual for whom the expense was incurred was not covered under a high-deductible health plan or had coverage that makes a person ineligible for an MSA (see A-4 through A-7). If included in gross income, distributions generally are subject to an additional 15 percent tax. However, if distributions that are included in gross income are made after the account holder turns age 65, becomes disabled or dies, the additional 15 percent tax does not apply.

Q-22. What medical expenses are eligible for tax-free distributions?

A-22. Medical expenses are defined under section 213 of the Code, but do not include expenses for insurance other than long-term care insurance, premiums for "COBRA"-type health care continuation coverage, or premiums for health care coverage while an individual receives unemployment compensation.

Q-23. Must MSA trustees or custodians determine whether MSA distributions are used for medical expenses?

A-23. MSA trustees or custodians are not required to determine whether MSA distributions are used for medical expenses; individuals who have MSAs should make this determination.

## ***V. Cap on Number of Taxpayers Using MSAs.***

Q-24. Does the law limit the number of MSAs that can be established?

A-24. Yes. The statute authorizes MSAs as a "pilot project". Under the statute, the pilot project is scheduled to end in the year 2000; however, the ability to establish MSAs generally will end earlier if the number of taxpayers contributing (or receiving employer contributions) to an MSA exceeds certain statutory limits for 1997, 1998 or 1999. In general, in determining whether the limits are exceeded, certain previously uninsured individuals will not be counted.

Q-25. What happens after the pilot project ends?

A-25. After the pilot project ends, all eligible individuals (as described in A-2) who previously made or received MSA contributions (or who are employed by certain employers whose employees previously used MSAs) can

make or receive MSA contributions, if they remain eligible individuals. In addition, individuals can continue to receive distributions from MSAs as described in A-20 through A-22.

Q-26. Do any special deadlines apply if the ability to establish MSAs generally ends early?

A-26. If the statutory limits are reached and therefore the ability to establish MSAs ends early (as referred to in A-24), an eligible individual who is not covered by a high-deductible health plan by a "cut-off date" specified in the law will be unable to establish an MSA, unless the individual's employer established a high-deductible health plan for its employees before that date and meets certain other requirements.

For employees of small employers, the law specifies two potential cut-off dates in 1997: September 1 and October 1. (For self-employed individuals, these dates are October 1, and November 1, 1997, respectively.) For each of 1998 and 1999, the potential cut-off date is October 1 of that year. If the employer's health plan has a regularly scheduled enrollment period that occurs during the period between the potential cut-off date and the end of the relevant year, the potential cut-off date is deferred to December 31 of that year.

Q-27. How will a taxpayer know if the ability to establish MSA generally ends early?

A-27. If the statutory limits are reached and therefore the ability to establish MSAs generally ends early (as described in A-24), the IRS will make an announcement not later than October 1 of the relevant year stating the applicable cut-off date. The ability to establish MSAs will not be cut off before the announcement is made.

## ***VI. Information Reporting by Trustees and Custodians.***

Q-28. How will the number of MSAs be determined?

A-28. The statute requires MSA trustees and custodians to report by August 1 of each year (1997, 1998, and 1999) the number of MSAs established before July 1 of the year, and also to report by June 1, 1997, the number of MSAs established before May 1, 1997 (together with additional information). See Internal Revenue Code section 220(j). The IRS will release a form to be used in making these reports.

Q-29. What other information reporting is required?

A-29. Information reporting required for MSAs is similar to information reporting for IRAs. The IRS will release forms and instructions to report MSA contributions, distributions and deductions. For further information, contact the Information Reporting Call Site on (304) 263-8700 (not a toll-free number).

## ***VII. Other Matters.***

MSAs are subject to a variety of other statutory rules and provisions, many of which are not addressed in this notice. No inference should be drawn regarding issues not expressly addressed in this notice that may be suggested by a particular question or answer, or by the inclusion or exclusion of certain questions.

Among the statutory provisions not addressed in this notice are:

- \* The requirement that employers make comparable MSA contributions for all comparable participating employees.

- \* The investment restrictions on MSAs.

- \* The rollover rules for MSAs.

- \* The special rules that apply upon divorce or death of the account holder.

- \* The rules for allocating the deduction for MSA contributions between married people.

- \* The Congressionally mandated study as to the effects of MSAs in the small group market on selection (including adverse selection), health costs (including the impact on premiums of individuals with comprehensive coverage), use of preventive care, consumer choice, the scope of coverage of high-deductible plans purchased in conjunction with such accounts, and other issues.

The statutory provisions governing MSAs, including new section 220 of the Internal Code are contained in section 301 of the Health Insurance Portability and Accountability Act of 1996, P.L. No. 104-191, 110 Stat. 1936.

## ***VIII. Comments Invited.***

Comments are invited on new section 220 of the Internal Revenue Code. Written comments are requested by March 16, 1997. Send submissions to: CC:DOM:CORP:R (Notice 96-53), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (Notice 96-53), Courier's Desk, Internal Revenue Service, 1111 Constitution Av-

enue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by submitting comments directly to the IRS internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

The principal author of this notice is Felix Zech of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice, call (202) 622-4606 (not a toll-free call).

### **Request for Comments on the Desirability of Guidance Relating to Section 457 Nonqualified Deferred Compensation Plans of State and Local Government and Tax-Exempt Employers**

#### **Notice 96-63**

This notice invites public comment on possible changes to procedures relating to requests for private letter rulings under § 457 of the Code. These changes may include (1) the publication of model amendments for existing § 457 plans in lieu of the issuance of rulings on individual plan amendments reflecting changes applicable to plans that meet the requirements of § 457(b) under the Small Business Job Protection Act of 1996, P.L. 104-188 ("SBJPA"), and (2) the creation of a Master and Prototype plan program for plans that meet the requirements of § 457(b).

#### **BACKGROUND**

Section 457 plans are nonqualified, deferred compensation plans established by state and local government and tax-exempt employers. These employers may establish either eligible plans that meet the requirements of § 457(b) or ineligible § 457(f) plans. The plans are subject to the specific requirements and deferral limitations of § 457 of the Code. Under § 457(a), compensation deferred pursuant to eligible plans that meet the requirements of § 457(b) and the income attributable to such deferred compensation is not taxable until the taxable year in which the deferred amounts are actually paid or made available to the plan participant or other beneficiary. In contrast, compensation deferred under a plan described in § 457(f) is included in the participant's or beneficiary's gross income for the first taxable year in which there is no substantial risk of forfeiture of the rights to the compensation. In addition, prior to the enactment of the SBJPA,

§ 457(b)(6) mandated that eligible plans under § 457(b) be unfunded and that plan assets not be set aside for the exclusive benefit of participants.

The SBJPA changed certain requirements for plans under § 457(b). Section 457(g), added by § 1448 of the SBJPA, now mandates that all assets and income of eligible state and local government plans (but not eligible plans of tax-exempt entities) must be held in trust for the exclusive benefit of participants and their beneficiaries. The trust requirement applies immediately to eligible plans established after August 20, 1996. For government plans already in existence on that date, the effective date of the § 457(g) requirement is January 1, 1999. However, a trust may be added to existing government plans at any time.

In addition, all plans that meet the requirements of § 457(b) may implement changes to § 457(e) made by § 1447 of the SBJPA. Section 457(e)(9) provides that certain benefits will not be treated as made available by reason of certain elections with regard to distributions from eligible § 457(b) plans. Also, § 457(e)(15) provides a cost-of-living adjustment for the maximum deferral amount under §§ 457(b)(2) and (c)(1) of the Code. These amendments made by § 1447 of the SBJPA apply to taxable years beginning after December 31, 1996.

The Service is considering issuing model language that will provide plan sponsors of eligible plans that meet the requirements of § 457(b) with a streamlined method for amending their plans to comply with the new requirements of § 457. This model language can be adopted by existing eligible plans in lieu of receiving a new ruling under § 457(b). This approach will provide time and cost savings to employers who have previously received favorable ruling letters with respect to their § 457(b) plans.

In addition, the Service is considering the establishment of a ruling program for master and prototype § 457(b) plans that will consider the statutory changes to § 457 under the SBJPA. The Service believes that this type of program is particularly well suited to ruling requests under § 457(b). For example, under such a program, if a state creates a plan, it can then be adopted by the political subdivisions, agencies and instrumentalities of that state, without the need for individual rulings for each state employer that adopts the same plan. In addition, the prototype plan program

could be used by banks, insurance companies and mutual fund companies, who may be interested in receiving advance rulings for plans that meet the requirements of § 457(b).

#### **REQUEST FOR PUBLIC COMMENT**

The Service is now evaluating possible changes to the advance letter ruling program for eligible § 457 plans. Accordingly, the Service requests comments concerning the usefulness of the model language and master and prototype plan approaches, and welcomes comments on any other useful approaches the Service might consider. Comments can be addressed to CC:DOM:CORP:R (Notice 96-63), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 96-63), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

#### **DRAFTING INFORMATION**

The principal author of this revenue procedure is Cheryl Press of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice, contact Cheryl Press at (202) 622-6030 (not a toll-free number).

### **Nondiscrimination Rules for Plans Maintained by Governments and Tax-Exempt Organizations**

#### **Notice 96-64**

#### **I. PURPOSE**

This notice addresses certain issues relating to the nondiscrimination rules that apply to qualified plans maintained by governments and by organizations exempt from taxation under § 501(a) of the Internal Revenue Code ("tax-exempt organizations").

For governmental plans, this notice—

- Extends the date for applying the regulations under § 401(k) and (m) until the first plan year beginning on or after October 1, 1997 (or, if later, 90 days after the opening of the first legislative session beginning on or after October 1,



1997, of the governing body with authority to amend the plan, if that body does not meet continuously);

- Clarifies that deemed satisfaction of the § 401(a)(4) and § 410(b) nondiscrimination and minimum coverage rules also applies for purposes of the references to those sections under § 401(k) and (m);

- Provides a special option for applying the § 401(k) and (m) nondiscrimination tests for years before 1999; and

- Allows governments until the 2001 plan year to apply, for nondiscrimination purposes, a reasonable, good faith interpretation of existing law in determining which entities must be aggregated, with any further guidance applying prospectively for plan years beginning in or after 2001.

For plans maintained by tax-exempt organizations, this notice—

- Extends the date for applying the regulations under §§ 401(a)(4), 401(a)(5), 401(l), 410(b), 414(r), and 414(s) until the first plan year beginning on or after October 1, 1997;

- Extends the remedial amendment period and other administrative relief until the last day of the first plan year beginning on or after October 1, 1997;

- Extends through the 1997 plan year the relief under existing regulations permitting employees of certain tax-exempt entities to be disregarded in applying § 410(b) to a § 401(k) plan maintained by a taxable entity; and

- Allows tax-exempt organizations until the 2001 plan year to apply, for nondiscrimination purposes, a reasonable, good faith interpretation of existing law in determining which entities must be aggregated, with any further guidance applying prospectively for plan years beginning in or after 2001.

## II. BACKGROUND

### A. Governmental Plans

Announcement 95-48, 1995-23 I.R.B. 13, provides that, in the case of governmental plans described in § 414(d), the regulations under § 401(k) and (m) apply to plan years beginning on or after the later of January 1, 1997, or 90 days after the opening of the first legislative session beginning on or after January 1, 1997, of the governing body with authority to amend the plan, if that body does not meet continuously. The regulations under §§ 401(a)(4), 401(a)(26), 410(b), and 414(s) apply to plan years beginning on or after the later of Janu-

ary 1, 1999, or 90 days after the opening of the first legislative session beginning on or after January 1, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously (“1999 legislative date”). For plan years beginning before the applicable effective date, governmental plans are deemed to satisfy §§ 401(a)(4), 401(a)(26), 401(k), 401(m), 410(b), and 414(s).

Announcement 95-48 also provides that the remedial amendment period under § 401(b) for governmental plans extends to the last day of the first plan year beginning on or after the later of January 1, 1999, or the 1999 legislative date. During the remedial amendment period, additional administrative relief provided under Notice 92-36, 1992-2 C.B. 364, continues to be available.

Announcement 95-48 solicited comments on the application of the nondiscrimination requirements to governmental plans. Comments included discussion of state law restrictions on modifying benefits for current employees and noted that it may be difficult to identify the appropriate governmental entity to be treated as the employer for purposes of nondiscrimination testing. For example, in the case of a state-wide plan covering members of a particular occupation (such as public school teachers), questions have been raised whether the employers for testing purposes would be the special districts (such as the school districts), the local governments, or other governmental entities. Comments also raised the issue of whether deemed satisfaction of § 401(a)(4) and § 410(b) by a governmental plan applies for purposes of certain requirements under § 401(k) and (m).

### B. Plans Maintained by Tax-Exempt Organizations

Announcement 95-48 provides that, in the case of plans maintained by tax-exempt organizations, other than church plans described in § 410(c)(1)-(B) (“nonelecting church plans”), the regulations under §§ 401(a)(4), 401(a)(5), 401(l), 410(b), 414(r), and 414(s) apply to plan years beginning on or after January 1, 1997. For plan years beginning before that effective date, a plan maintained by a tax-exempt organization must be operated in accordance with a reasonable, good faith interpretation of §§ 401(a)(4), 401(a)(5), 401(l), 410(b), 414(r), and 414(s). The remedial amendment period for plans maintained by tax-exempt organizations was ex-

tended in Announcement 95-48 to the last day of the first plan year beginning on or after January 1, 1997. During the remedial amendment period, additional administrative relief provided under Notice 92-36 continues to be available. (See section V of Notice 92-36, and section IV of Rev. Proc. 94-13, 1994-1 C.B. 566, for the definition of “plan maintained by a tax-exempt organization.”)

Announcement 95-48 solicited comments on the issue of which entities must be aggregated under § 414(b) and (c) (relating to the definition of employer) and on any other related nondiscrimination issues affecting tax-exempt organizations. No comments were submitted on behalf of tax-exempt organizations in response to Announcement 95-48, and the Treasury and the Service have not identified any other unique characteristics of tax-exempt organizations that require special rules for applying §§ 401(a)(4), 401(a)(5), 401(l), 410(b), 414(r), or 414(s) to plans maintained by tax-exempt organizations (other than nonelecting church plans).

### C. Nonelecting Church Plans

Under Announcement 95-48, in the case of nonelecting church plans, the regulations under §§ 401(a)(4), 401(a)(5), 401(l), and 414(s) apply to plan years beginning on or after January 1, 1999. For plan years beginning before that effective date, a nonelecting church plan must be operated in accordance with a reasonable, good faith interpretation of §§ 401(a)(4), 401(a)(5), 401(l), and 414(s). The remedial amendment period for nonelecting church plans was extended in Announcement 95-48 to the last day of the first plan year beginning on or after January 1, 1999. During the remedial amendment period, additional administrative relief provided under Notice 92-36 continues to be available.

## III. EXTENSION OF EFFECTIVE DATES

### A. Governmental Plans

Under the extension provided by this notice, in the case of governmental plans, the regulations under § 401(k) and (m) apply only to plan years beginning on or after the later of October 1, 1997, or 90 days after the opening of the first legislative session beginning on or after October 1, 1997, of the governing body with authority to amend the plan, if that body does not meet continuously. For plan years beginning before

this extended effective date, governmental plans are deemed to satisfy § 401(k) and (m). The special rule in § 1.402(a)-1(d)(3)(v) of the Income Tax Regulations (providing an income tax deferral for certain elective contributions) is extended for the same period. The Treasury and the Service do not anticipate issuing any further guidance on the application of the regulations under § 401(k) and (m) to governmental plans prior to the effective date.

### **B. Plans Maintained by Tax-Exempt Organizations**

Under the extension provided by this notice, in the case of plans maintained by tax-exempt organizations (other than nonelecting church plans), the regulations under §§ 401(a)(4), 401(a)(5), 401(l), 410(b), 414(r), and 414(s) apply only to plan years beginning on or after October 1, 1997. For plan years beginning before this extended effective date, such plans must be operated in accordance with a reasonable, good faith interpretation of these sections. The Treasury and the Service do not anticipate issuing any further guidance on the application of the regulations under these sections to plans maintained by tax-exempt organizations prior to the effective date.

### **C. Nonelecting Church Plans**

As noted above, under Announcement 95-48, in the case of nonelecting church plans, the regulations under §§ 401(a)(4), 401(a)(5), 401(l), and 414(s) do not apply until the 1999 plan year.

## **IV. EXTENSION OF REMEDIAL AMENDMENT PERIOD AND ADMINISTRATIVE RELIEF**

### **A. Remedial Amendment Period**

Notice 92-36 and Announcement 95-48 set forth the remedial amendment period described in § 401(b) applicable to governmental plans and plans maintained by tax-exempt organizations. The remedial amendment period is the period during which a plan may be amended retroactively to comply with certain plan qualification requirements. Notice 92-36 makes additional administrative relief available during the remedial amendment period. For example, the transition relief under Alternative II D of Notice 88-131, 1988-2 C.B. 546, applies. This permits, during the remedial amendment period, the continued accrual of certain benefits under a plan that would otherwise fail to comply with

§ 401(a)(4) until the plan is amended to comply with that section. In addition, for purposes of testing benefits, rights and features for the first plan year in which the regulations under § 401(a)(4) are effective, Notice 92-36 provides that any amendment made during the plan year regarding eligibility for a benefit, right or feature may be treated as if it had been in effect for the entire plan year.

### **B. Governmental Plans and Nonelecting Church Plans**

As noted above, under Announcement 95-48, administrative relief under Notice 92-36, including the remedial amendment period, extends to the last day of the first plan year beginning on or after the later of January 1, 1999, or the 1999 legislative date in the case of governmental plans, and to the last day of the first plan year beginning on or after January 1, 1999, in the case of nonelecting church plans.

### **C. Plans Maintained by Tax-Exempt Organizations**

Under this notice, the remedial amendment period for plans maintained by tax-exempt organizations (other than nonelecting church plans) is extended to the last day of the first plan year beginning on or after October 1, 1997. The additional administrative relief provided under Notice 92-36 also applies through this extended remedial amendment period. Thus, in the case of a plan with a plan year of October 1 through September 30, any amendments required to comply with the regulations under §§ 401(a)(4), 401(a)(5), 401(l), 410(b), 414(r), and 414(s) for the plan year beginning October 1, 1997, must be made by September 30, 1998. In the case of a plan using a calendar plan year, these regulations are first effective for the 1998 plan year, and any amendments required to comply with these regulations for that year must be made by December 31, 1998.

## **V. SPECIAL RULES FOR § 401(k) AND (m) PLANS**

### **A. Governmental Plans**

#### **1. Application of §§ 401(a)(4) and 410(b)**

As noted above, for governmental plans, the regulations under §§ 401(a)(4), 401(a)(26), 410(b), and 414(s) apply to plan years beginning on or after the later of January 1, 1999, or the 1999 legislative date. For plan years begin-

ning before the applicable effective date, governmental plans are deemed to satisfy these provisions. Certain provisions of § 401(k) and (m) and the regulations thereunder separately require that a plan, or certain aspects of a plan, satisfy § 401(a)(4) or 410(b). For example, § 401(k)(3)(A)(i) requires that the employees eligible to benefit under a cash or deferred arrangement satisfy § 410(b)(1). This notice clarifies that, for plan years beginning before the later of January 1, 1999, or the 1999 legislative date, a governmental plan is deemed to satisfy § 401(a)(4) and § 410(b) for all purposes, including for purposes of § 401(k) and (m). Thus, for example, a governmental plan that is subject to § 401(k) is deemed to satisfy § 401(k)(3)(A)(i) without regard to whether the group of eligible employees satisfies § 410(b)(1), and a governmental plan that is subject to § 401(m) is deemed to satisfy § 401(a)(4) and § 410(b) for purposes of § 1.401(m)-1(a)(2) and (e)(4).

### **2. Special Testing Rule**

Under §§ 1.410(b)-7(c)(4)(ii)(C), 1.401(k)-1(g)(11), and 1.401(m)-1(f)(14), in the case of a plan that covers employees of more than one employer, the tests under § 401(k)(3) and § 401(m)(2) must be applied on an employer-by-employer basis. As discussed above, comments have noted that it may be difficult to identify the appropriate employer for purposes of testing a plan that covers employees of different governmental entities. Under this notice, for plan years beginning before the later of January 1, 1999, or the 1999 legislative date, in applying the tests under § 401(k)(3) and § 401(m)(2) to a governmental plan the employees covered by the plan may be treated as employed by a single governmental employer. Thus, the tests under § 401(k)(3) and § 401(m)(2) may be applied to a governmental plan on a plan-wide basis, notwithstanding the fact that the plan may cover employees of more than one governmental employer.

### **B. Plans Maintained by Controlled Groups Consisting of Tax-Exempt and Taxable Entities**

Some employers consist of tax-exempt entities and taxable entities that must be aggregated under § 414(b) or (c) in determining whether a plan is qualified. Under § 401(k)(4)(B), prior to its amendment by § 1426 of the Small Business Job Protection Act of 1996

("SBJPA"), tax-exempt organizations were precluded from establishing plans that included qualified cash or deferred arrangements under § 401(k). Thus, an employer that included both taxable and tax-exempt entities was only permitted to maintain a plan that included a qualified cash or deferred arrangement under § 401(k) for the taxable entities. However, the SBJPA amended § 401(k)-(4)(B) to repeal this prohibition and permit tax-exempt entities to establish such plans for plan years beginning after 1996.

Special rules are provided in §§ 1.401(a)(26)-1(b)(4) and 1.410(b)-6(g) for a qualified cash or deferred arrangement under § 401(k) for the employees of a taxable entity that must be aggregated with a tax-exempt entity. Under these special rules, if certain requirements are met, the employees of the tax-exempt entity that are precluded from being covered in the qualified cash or deferred arrangement may be disregarded when determining whether the arrangement maintained by the taxable entity satisfies § 401(a)(26) or § 410(b). The special rules apply only to employees whose employer is precluded under § 401(k)(4)(B) from maintaining a qualified cash or deferred arrangement.

Beginning in 1997, these special rules would no longer apply because employees of a tax-exempt entity are permitted to be covered by a qualified cash or deferred arrangement. The Treasury and the Service recognize that this change presents practical issues for employers consisting of both tax-exempt and taxable entities as they consider possible redesign of their retirement programs in light of § 1426 of the SBJPA. Consequently, this notice extends the relief provided under § 1.410(b)-6(g) for these employers through the 1997 plan year. Through the 1997 plan year only, these employers may continue to disregard employees of tax-exempt entities when testing a qualified cash or deferred arrangement maintained by a taxable entity in accordance with § 1.410(b)-6(g).

Section 1432 of the SBJPA provides that, beginning in the 1997 plan year, § 401(a)(26) applies only to defined benefit plans. Accordingly, it is not necessary to extend the relief provided by § 1.401(a)(26)-1(b)(4) with respect to § 401(a)(26).

## VI. 403(b) PLANS

Notice 89-23, 1989-1 C.B. 654, discusses the nondiscrimination requirements under § 403(b)(12)(A) for annuity contracts, custodial accounts, or retirement income accounts purchased under plans eligible for favorable tax treatment under § 403(b) ("403(b) plans"). Section 403(b)(12)(A)(i) provides that, with respect to nonelective contributions, a 403(b) plan must meet the requirements of §§ 401(a)(4), (5), (17) and (26), 401(m), and 410(b). Notice 89-23 provides that § 403(b)(12) is satisfied if an employer operates its 403(b) plan in accordance with a reasonable, good faith interpretation of § 403(b)(12). As provided in Announcement 95-48, until further guidance is issued, employers maintaining 403(b) plans may continue to rely on Notice 89-23. However, employers maintaining 403(b) plans may not continue to rely on a reasonable, good faith interpretation of § 401(a)(17), but must comply with the regulations under § 401(a)(17) as of the applicable effective dates set forth in § 1.401(a)(17)-1(d). Of course, for the period for which a qualified plan is deemed to satisfy any particular statutory nondiscrimination requirement, the nonelective contributions under a governmental 403(b) plan also are deemed to satisfy that requirement.

## VII. APPLICATION OF § 414(b) AND (c)

Until further guidance is issued, governments and tax-exempt organizations (including churches) may apply a reasonable, good faith interpretation of existing law in determining which entities must be aggregated under § 414(b) and (c). Any further guidance will be applied on a prospective basis only and will not be effective before plan years beginning in 2001.

The Treasury and the Service invite specific suggestions for an aggregation standard or standards appropriate for tax-exempt organizations under § 414-(b), (c) and (o). In particular, comments are requested on the appropriateness of the standard described in Section V.B.2.a of Notice 89-23, under which two entities are in the same controlled group if at least 80% of the directors, trustees or other individual members of one entity's governing body are either representatives of or directly or indirectly control, or are controlled by, the other entity. However, because questions have arisen as to whether this

standard would be appropriate and sufficient in all circumstances, the Treasury and the Service intend to consider alternative and additional standards as well.

## VIII. COMMENTS

Comments or suggestions in response to this notice should be submitted by April 30, 1997, and should be addressed to: CC:DOM:CORP:T:R (Notice 96-64), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Alternatively, taxpayers may hand-deliver comments between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (Notice 96-64), Courier's desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC, or may submit comments electronically via the IRS internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

## IX. EFFECT ON OTHER DOCUMENTS

Notice 89-23 and Notice 92-36 are modified.

## DRAFTING INFORMATION

The principal author of this notice is Diane S. Bloom of the Employee Plans Division. For further information regarding this notice, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6074 or (202) 622-6075, between the hours of 1:30 p.m. and 4 p.m. Eastern Time, Monday through Thursday, or Ms. Bloom at (202) 622-6214. Alternatively, please contact Patricia McDermott of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) at (202) 622-6030. (These telephone numbers are not toll-free.)

*26 CFR 601.201: Rulings and determinations letters.*

## Rev. Proc. 96-56

### Section 1. PURPOSE

This revenue procedure amplifies Rev. Proc. 96-3, 1996-1 I.R.B. 82, which sets forth areas of the Internal Revenue Code ("Code") under the jurisdiction of the Associate Chief Counsel (Employee Benefits and Exempt Organizations) in which the Internal Revenue Service will not issue advance rulings.

### Section 2. BACKGROUND

Rev. Proc. 96-3, section 5, lists specific areas in which rulings or determi-

nation letters will not be issued because the areas are under extensive study. This revenue procedure adds a subparagraph for certain rulings involving § 457 nonqualified deferred compensation plans of state and local government and tax-exempt entities. The Small Business Job Protection Act of 1996, P.L. 104-188 (“SBJPA”) has substantially changed the requirements for state and local government plans that meet the requirements of § 457(b) by mandating that all assets and income of these plans be held in trust for the exclusive benefit of the participants and their beneficiaries. The SBJPA has also added other provisions which are now available for use in all plans that meet the requirements of § 457(b).

### **Section 3. PROCEDURE**

Rev. Proc. 96-3 is amplified by adding to section 5 the following: Section 457. Deferred Compensation Plans of State and Local Government and Tax-Exempt Organizations. The tax effect of provisions under the Small Business Job Protection Act affecting plans described in § 457. Taxpayers may, however, still receive advance rulings on § 457 plans based on the law in effect prior to enactment of the Small Business Job Protection Act.

### **Section 4. EFFECTIVE DATE**

This revenue procedure applies to all ruling requests, including any pending in the National Office before December 16, 1996. In pending cases, taxpayers may withdraw their ruling request from con-

sideration and obtain a refund of their user fee. If the ruling request is not withdrawn, the ruling will analyze the taxpayer’s plan under the law in effect before the enactment of the SBJPA.

### **Section 5. EFFECTS ON OTHER REVENUE PROCEDURES**

Rev. Proc. 96-3 is amplified.

### **DRAFTING INFORMATION**

The principal author of this revenue procedure is Cheryl Press of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this revenue procedure, contact Cheryl Press at (202) 622-6030 (not a toll-free number).

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## Part IV. Items of General Interest

### Foundations Status of Certain Organizations

#### Announcement 96-123

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

*Former Public Charities.* The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

Abba Koval Perpetual Fund Corporation, Cleveland, OH  
Academic Freedom Lecture Fund, Ann Arbor, MI  
ACCHA, Inc., Columbus, OH  
Action Group to Save America's Economy, Willoughby, OH  
African American Math Science Coalition, Cincinnati, OH  
Albion Volunteer Service Organization, Albion, MI  
American Against Corruption in Government, New Richmond, IN  
American Foundation for Vision Awareness Michigan Affiliate, Lansing, MI  
Anchor Bay Soccer Organization, New Baltimore, MI  
Apex Capital, Inc., Cleveland, OH  
Arbor Health Associates, Manchester, MI  
Association of Black Automotive Employees, Inc., Detroit, MI  
A Star is Born Foundation, Inc., Kings Mills, OH  
Attendance Plus, Detroit, MI  
Back to Christ Ministry BTC, Detroit, MI  
Balanced Scale, Inc., Cleveland Hts., OH  
Ben Davis Girls Basketball Association, Inc., Indianapolis, IN  
Bethune Community Council Non-Profit Housing Corporation, Detroit, MI  
Boy Scouts of America Troop 97, Inc., Mt. Clemens, MI

Bridge to Russia, Cleveland, OH  
Buckeye Babes Girls Fast Pitch, Inc., Uniontown, OH  
Canton Dry Times Club, Canton, OH  
Center for Corrections Development, Inc., Indianapolis, IN  
Champaign County Preservation Alliance, Urbana, OH  
Charisma, Inc., Portland, IN  
Charterhouse Academies, Inc., Detroit, MI  
Children's Policy Institute of West Virginia, Inc., Charleston, WV  
Christian Family Bible Fellowship, Inc., Marion, OH  
Cleveland Foundation for Architecture, Inc., Cleveland, OH  
Clothe-A-Child, Newark, OH  
Cloverville Community Center, Inc., Muskegon, MI  
Columbus Babe Ruth Baseball, Inc., Columbus, OH  
Concerned Ministries, Inc., Fruitport, MI  
Council of Minority Business Organizations 401k Plan, Lansing, MI  
Creation Expeditions, Inc., Indianapolis, IN  
Dancers Studio, Inc. of Columbus, Columbus, OH  
Delta Tau Delta Scholarship Fund, Cincinnati, OH  
Dennis D. McLain Charitable Foundation, Inc., Brighton, MI  
Doulos Ministries, Cincinnati, OH  
Dozier Scholarship Fund of Peace and Goodwill MBC, Detroit, MI  
DUCC, Inc., Camden, IN  
East Chicago Centennial Committee, Inc., East Chicago, IN  
Elisha Community Redevelopment Corporation, Cincinnati, OH  
Elkins Main Street Project, Inc., Elkins, WV  
Lambda Chi Alpha/Sigma Chapter Education Foundation, Inc., St. Clair Shores, MI  
Lansing Crusader Booster Club, Incorporated, Lansing, MI  
Lawrence Township Boys Basketball League, Inc., Indianapolis, IN  
Lectonia-Washingtonville Baseball Association, Lectonia, OH  
Licking Youth Life Center, Newark, OH  
Life and Greer Home, Inc., Detroit, MI  
Life in the Mainstream, Euclid, OH  
Lift ICO UCO Community Development Corporation, East Chicago, IN  
Lithotech of Owensboro Kentucky, Inc., Owensboro, KY  
Little Buns, Inc., Carmel, IN

Lion of Judah Ministries, Inc., Galena, OH  
The Loft, Benton Harbor, MI  
Lost Creek Volunteer Fire Department, Inc., Dice, KY  
Lowell Main Street Association Inc., Lowell, IN  
Making Opportunities Very Exciting, Jackson, KY  
The Manger, Conneaut, OH  
Marion Noon Kiwanis Foundation, Inc., Marion, OH  
Matteson Institute, Inc., Berrien Springs, MI  
Mednotes 1995, Columbus, OH  
Mentor Soccer Club, Mento, OH  
Metro East Chamber of Commerce Childrens Medical Trust Fund, St. Clair Shores, MI  
Metropolitan Childrens Museum, Inc., Mt. Pleasant, MI  
Midwest Hispanic Coalition, Toledo, OH  
Mitchell Swim Club, Mitchell, IN  
Mr. Residential Services Fourth Housing, Inc., Lima, OH  
Mr. Residential Services—Fifth Housing Corporation, Inc., Lima, OH  
New Ohio Volunteer Advocates, Inc., Akron, OH  
New Start Ministries, Akron, OH  
Northwest Ohio Leadership Foundation, Sylvania, OH  
Ohio AIDS Coalition, Columbus, OH  
Ohio Area Service Committee of Cocaine Anonymous, Toledo, OH  
Ohio Cardinal, Akron, OH  
Ohio Chiropractic Foundation, Columbus, OH  
Olentangy Youth Athletic Association, Powell, OH  
Open Gate Shelter, Cleveland, OH  
Overeaters Anonymous Western Michigan Inter Group, Newaygo, MI  
Parents of Teen Parents, Akron, OH  
Positive Peer Plus, Inc., Detroit, OH  
Potawatomi Creative Playground Project, Inc., South Bend, IN  
Progressive Action Council, Cleveland, OH  
Property Development Engineers, Inc., Detroit, MI  
Pulmonary Rehabilitation Organization of Northern Ohio, Parma, OH  
Quality Community Housing Corporation, Pontiac, MI  
Quin Centennial Redevelopment Corporation, Columbus, OH  
Reasonable Choices, Inc., Springfield, OH  
Re-Connect of Michigan, Ann Arbor, MI

Responsible Social Values Program of  
Muskingum County, Inc., Zanesville,  
OH

Rhea House, Inc., Ripley, WV

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

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**Deletions From Cumulative List of  
Organizations Contributions to  
Which Are Deductible Under  
Section 170 of the Code**

**Announcement 96-128**

The names of organizations that no longer qualify as organizations described in section 170(c)(2) of the Internal Revenue Code of 1986 are listed below.

Generally, the Service will not disallow deductions for contributions made

to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, contributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on December 16, 1996, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any

individual who was responsible, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Society of Separationists, Inc.

Austin, TX

Charles E. Stevens American Atheist

Library and Archives, Inc.

Austin, TX

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**Availability of Publication 938 on  
IRS Electronic Bulletin Board  
(IRP-BBS)**

**Announcement 96-129**

The 1996 update of Publication 938, Real Estate Mortgage Investment Conduits (REMICs) Reporting Information (And Other Collateralized Debt Obligations (CDOs)), is now available on the IRS Electronic Bulletin Board (IRP-BBS). It contains information received by the Service during the period September 16, 1995, through August 31, 1996. You can download the publication if you have a computer with a modem. Dial 1-304-264-7070 and follow the instructions. If you have problems downloading the publication, call the help line at 1-304-263-8700 and ask for the bulletin board. (These are not toll-free calls.)

## Announcement of the Disbarment, Suspension, or Consent to Voluntary Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under 31 Code of Federal Regulations, Part 10, an attorney, certified public accountant, enrolled agent, or enrolled actuary, in order to avoid the institution or conclusion of a proceeding for his disbarment or suspension from practice before the Internal Revenue Service, may offer his consent to suspension from such practice. The Director of Practice, in his discretion, may suspend an attorney, certified public accountant, enrolled agent, or enrolled actuary in accordance with the consent offered.

Attorneys, certified public accountants, enrolled agents, and enrolled actuaries are prohibited in any Internal Revenue

Service matter from directly or indirectly employing, accepting assistance from, being employed by or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under consent suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public

accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under consent suspension from practice before the Internal Revenue Service:

Name	Address	Designation	Date of Suspension
Sherman, Richard M.	Crystal Lake, IL	CPA	October 18, 1996 to July 17, 1997
Hunter, Lewis	Jacksonville, FL	CPA	October 25, 1996 to January 24, 1997
Hisken, Donald	Red Bluff, CA	CPA	November 1, 1996 to March 31, 1997
Byrne, Steven P.	Arcadia, CA	Attorney	November 1, 1996 to January 31, 1997
Mulrey, Robert M.	Milton, MA	CPA	November 1, 1996 to October 31, 1997
Edwards, Ronald A.	Plymouth, MI	CPA	November 1, 1996 to April 30, 1998
Hart Jr., Charles E.	Wilmington, OH	Attorney	November 1, 1996 to October 31, 1998
Willner, Peter D.	Stowe, VT	CPA	November 1, 1996 to April 30, 1997
May, Gary	Madison, WI	Attorney	November 1, 1996 to October 31, 1998
Josephson, Elliott	Northbrook, IL	CPA	November 1, 1996 to October 31, 1998
Capwill Jr., James A.	Solon, OH	CPA	November 1, 1996 to February 28, 1997
Hazel, John J.	Ridgefield, CT	Enrolled Agent	November 1, 1996 to January 31, 1997
Jacobs, Patrick	St. Paul, MN	CPA	November 1, 1996 to December 31, 1996
Lau, William	Crete, IL	CPA	November 1, 1996 to June 30, 1997
Franklin, Gene L.	Lees Summit, MO	Enrolled Agent	November 1, 1996 to January 31, 1997
Winterhalter, Charles L.	Cincinnati, OH	CPA	November 1, 1996 to April 30, 1998
Cremer, Patricia L.	Roundup, MT	CPA	November 5, 1996 to May 4, 1997
Gardner, Stephen A.	Dallas, TX	Attorney	November 7, 1996 to May 6, 1999
Masini, David	Wheat Ridge, CO	CPA	November 12, 1996 to November 11, 1997
Cunningham, Michael	Lafayette, IN	CPA	November 12, 1996 to August 11, 1997
Smith, Robert	Chicago, IL	CPA	January 1, 1997 to December 31, 1997

## Announcement of the Expedited Suspension of Attorneys, Certified Public Accountants, Enrolled Agents, and Enrolled Actuaries From Practice Before the Internal Revenue Service

Under title 31 of the Code of Federal Regulations, section 10.76, the Director of Practice is authorized to immediately suspend from practice before the Internal Revenue Service any practitioner who, within five years, from the date the expedited proceeding is instituted, (1) has had a license to practice as an attorney, certified public accountant, or actuary suspended or revoked for cause; or (2) has been convicted of any crime under title 26 of the United States Code or, of a felony under title 18 of the United States Code involving dishonesty or breach of trust.

Attorneys, certified public accountants, enrolled agents, and enrolled actu-

aries are prohibited in any Internal Revenue Service matter from directly or indirectly employing, accepting assistance from, being employed by, or sharing fees with, any practitioner disbarred or suspended from practice before the Internal Revenue Service.

To enable attorneys, certified public accountants, enrolled agents, and enrolled actuaries to identify practitioners under expedited suspension from practice before the Internal Revenue Service, the Director of Practice will announce in the Internal Revenue Bulletin the names and addresses of practitioners who have been suspended from such practice, their designation as attorney, certified public

accountant, enrolled agent, or enrolled actuary, and date or period of suspension. This announcement will appear in the weekly Bulletin at the earliest practicable date after such action and will continue to appear in the weekly Bulletins for five successive weeks or for as many weeks as is practicable for each attorney, certified public accountant, enrolled agent, or enrolled actuary so suspended and will be consolidated and published in the Cumulative Bulletin.

The following individuals have been placed under suspension from practice before the Internal Revenue Service by virtue of the expedited proceeding provisions of the applicable regulations:

Name	Address	Designation	Date of Suspension
Pacchiana, Paul	Chappaqua, NY	Attorney	Indefinite from October 9, 1996
Rosenberger, David H.	Centerville, OH	Enrolled Agent	Indefinite from October 21, 1996
Gudes, Gerald	W. Bloomfield, MI	CPA	Indefinite from October 22, 1996
Donnelly, Richard S.	Asheville, NC	CPA	Indefinite from October 22, 1996
Burrows, William D.	Dallas, TX	Attorney	Indefinite from November 13, 1996
Klausner, Julius	Scarsdale, NY	CPA	Indefinite from November 13, 1996
Glessner, Randy	Omak, WA	CPA	Indefinite from November 13, 1996
Aspland, Frieda R.	Greenville, SC	CPA	Indefinite from November 13, 1996



## Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling

is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does

more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.

Acq.—Acquiescence.

B—Individual.

BE—Beneficiary.

BK—Bank.

B.T.A.—Board of Tax Appeals.

C.—Individual.

C.B.—Cumulative Bulletin.

CFR—Code of Federal Regulations.

CI—City.

COOP—Cooperative.

Ct.D.—Court Decision.

CY—County.

D—Decedent.

DC—Dummy Corporation.

DE—Donee.

Del. Order—Delegation Order.

DISC—Domestic International Sales Corporation.

DR—Donor.

E—Estate.

EE—Employee.

E.O.—Executive Order.

ER—Employer.

ERISA—Employee Retirement Income Security Act.

EX—Executor.

F—Fiduciary.

FC—Foreign Country.

FICA—Federal Insurance Contribution Act.

FISC—Foreign International Sales Company.

FPH—Foreign Personal Holding Company.

F.R.—Federal Register.

FUTA—Federal Unemployment Tax Act.

FX—Foreign Corporation.

G.C.M.—Chief Counsel's Memorandum.

GE—Grantee.

GP—General Partner.

GR—Grantor.

IC—Insurance Company.

I.R.B.—Internal Revenue Bulletin.

LE—Lessee.

LP—Limited Partner.

LR—Lessor.

M—Minor.

Nonacq.—Nonacquiescence.

O—Organization.

P—Parent Corporation.

PHC—Personal Holding Company.

PO—Possession of the U.S.

PR—Partner.

PRS—Partnership.

PTE—Prohibited Transaction Exemption.

Pub. L.—Public Law.

REIT—Real Estate Investment Trust.

Rev. Proc.—Revenue Procedure.

Rev. Rul.—Revenue Ruling.

S—Subsidiary.

S.P.R.—Statements of Procedural Rules.

Stat.—Statutes at Large.

T—Target Corporation.

T.C.—Tax Court.

T.D.—Treasury Decision.

TFE—Transferee.

TFR—Transferor.

T.I.R.—Technical Information Release.

TP—Taxpayer.

TR—Trust.

TT—Trustee.

U.S.C.—United States Code.

X—Corporation.

Y—Corporation.

Z—Corporation.

## Numerical Finding List<sup>1</sup>

Bulletins 1996–27 through 1996–50

### Announcements:

96–61, 1996–27 I.R.B. 72  
96–62, 1996–28 I.R.B. 55  
96–63, 1996–29 I.R.B. 18  
96–64, 1996–29 I.R.B. 18  
96–65, 1996–29 I.R.B. 18  
96–66, 1996–29 I.R.B. 19  
96–67, 1996–30 I.R.B. 27  
96–68, 1996–31 I.R.B. 45  
96–69, 1996–32 I.R.B. 38  
96–70, 1996–32 I.R.B. 40  
96–71, 1996–33 I.R.B. 16  
96–72, 1996–33 I.R.B. 16  
96–73, 1996–33 I.R.B. 18  
96–74, 1996–33 I.R.B. 19  
96–75, 1996–34 I.R.B. 29  
96–76, 1996–34 I.R.B. 29  
96–77, 1996–35 I.R.B. 15  
96–78, 1996–35 I.R.B. 15  
96–79, 1996–35 I.R.B. 15  
96–80, 1996–35 I.R.B. 16  
96–81, 1996–36 I.R.B. 13  
96–82, 1996–36 I.R.B. 14  
96–83, 1996–36 I.R.B. 14  
96–84, 1996–36 I.R.B. 14  
96–85, 1996–37 I.R.B. 20  
96–86, 1996–37 I.R.B. 21  
96–87, 1996–37 I.R.B. 21  
96–88, 1996–38 I.R.B. 150  
96–89, 1996–37 I.R.B. 22  
96–90, 1996–37 I.R.B. 22  
96–91, 1996–37 I.R.B. 23  
96–92, 1996–38 I.R.B. 151  
96–93, 1996–38 I.R.B. 151  
96–94, 1996–38 I.R.B. 153  
96–96, 1996–39 I.R.B. 41  
96–97, 1996–39 I.R.B. 41  
96–98, 1996–39 I.R.B. 42  
96–99, 1996–39 I.R.B. 42  
96–100, 1996–40 I.R.B. 10  
96–101, 1996–40 I.R.B. 10  
96–102, 1996–40 I.R.B. 11  
96–103, 1996–40 I.R.B. 12  
96–104, 1996–41 I.R.B. 10  
96–105, 1996–42 I.R.B. 19  
96–106, 1996–42 I.R.B. 23  
96–107, 1996–42 I.R.B. 27  
96–108, 1996–44 I.R.B. 15  
96–109, 1996–43 I.R.B. 76  
96–110, 1996–43 I.R.B. 77  
96–111, 1996–44 I.R.B. 16  
96–112, 1996–45 I.R.B. 7  
96–113, 1996–44 I.R.B. 18  
96–114, 1996–45 I.R.B. 7  
96–115, 1996–45 I.R.B. 9  
96–116, 1996–46 I.R.B. 12  
96–117, 1996–46 I.R.B. 12  
96–118, 1996–46 I.R.B. 12  
96–119, 1996–46 I.R.B. 13  
96–120, 1996–47 I.R.B. 12  
96–121, 1996–47 I.R.B. 12  
96–122, 1996–47 I.R.B. 13  
96–124, 1996–49 I.R.B. 22  
96–125, 1996–48 I.R.B. 21  
96–126, 1996–50 I.R.B. 12  
96–127, 1996–50 I.R.B. 12

### Court Decisions:

2058, 1996–34 I.R.B. 13  
2059, 1996–34 I.R.B. 10  
2060, 1996–34 I.R.B. 5

### Delegation Orders:

155 (Rev. 4), 1996–40 I.R.B. 9

### Notices:

96–36, 1996–27 I.R.B. 11  
96–37, 1996–31 I.R.B. 29  
96–38, 1996–31 I.R.B. 29  
96–39, 1996–32 I.R.B. 8  
96–40, 1996–33 I.R.B. 11  
96–41, 1996–35 I.R.B. 6  
96–42, 1996–35 I.R.B. 6  
96–43, 1996–36 I.R.B. 7  
96–44, 1996–36 I.R.B. 7  
96–45, 1996–39 I.R.B. 7  
96–46, 1996–39 I.R.B. 7  
96–47, 1996–39 I.R.B. 8  
96–48, 1996–39 I.R.B. 8  
96–49, 1996–41 I.R.B. 6  
96–50, 1996–41 I.R.B. 6  
96–51, 1996–42 I.R.B. 6  
96–52, 1996–42 I.R.B. 8  
96–54, 1996–44 I.R.B. 13  
96–55, 1996–47 I.R.B. 7  
96–56, 1996–47 I.R.B. 7  
96–57, 1996–47 I.R.B. 9  
96–58, 1996–49 I.R.B. 7  
96–59, 1996–48 I.R.B. 10  
96–60, 1996–49 I.R.B. 7  
96–61, 1996–49 I.R.B. 8  
96–62, 1996–49 I.R.B. 8

### Proposed Regulations:

CO–9–96, 1996–34 I.R.B. 20  
CO–24–96, 1996–30 I.R.B. 22  
CO–25–96, 1996–31 I.R.B. 30  
CO–26–96, 1996–31 I.R.B. 31  
FI–59–94, 1996–30 I.R.B. 23  
FI–32–95, 1996–34 I.R.B. 21  
FI–48–95, 1996–31 I.R.B. 36  
FL–28–96, 1996–31, I.R.B. 33  
GL–7–96, 1996–33 I.R.B. 13  
IA–292–84, 1996–28 I.R.B. 38  
IA–26–94, 1996–30 I.R.B. 24  
IA–42–95, 1996–49 I.R.B. 21  
IA–29–96, 1996–33 I.R.B. 14  
INTL–4–95, 1996–36 I.R.B. 8  
PS–39–93, 1996–34 I.R.B. 27  
PS–22–96, 1996–33 I.R.B. 15  
REG–208215–91, 1996–38 I.R.B. 145  
REG–209803–95, 1996–44 I.R.B. 14  
REG–209826–96, 1996–42 I.R.B. 10  
REG–209827–96, 1996–37 I.R.B. 19  
REG–245562–96, 1996–41 I.R.B. 8  
REG–251520–96, 1996–48 I.R.B. 15

### Public Laws:

104–117, 1996–34 I.R.B. 19  
104–134, 1996–38 I.R.B. 7  
104–168, 1996–38 I.R.B. 8  
104–191, 1996–43 I.R.B. 7  
104–193, 1996–46 I.R.B. 4

### Railroad Retirement Quarterly Rate

1996–29 I.R.B. 14

### Revenue Procedures:

96–36, 1996–27 I.R.B. 11  
96–37, 1996–29 I.R.B. 16  
96–39, 1996–33 I.R.B. 11  
96–40, 1996–32 I.R.B. 8  
96–41, 1996–32 I.R.B. 9  
96–42, 1996–32 I.R.B. 14  
96–43, 1996–35 I.R.B. 6  
96–44, 1996–35 I.R.B. 7  
96–45, 1996–35 I.R.B. 12  
96–46, 1996–38 I.R.B. 144  
96–47, 1996–39 I.R.B. 10  
96–48, 1996–39 I.R.B. 10  
96–49, 1996–43 I.R.B. 74  
96–50, 1996–47 I.R.B. 10  
96–51, 1996–47 I.R.B. 10  
96–52, 1996–48 I.R.B. 10  
96–53, 1996–49 I.R.B. 9  
96–54, 1996–50 I.R.B. 9  
96–55, 1996–50 I.R.B. 10

### Revenue Rulings:

96–33, 1996–27 I.R.B. 4  
96–34, 1996–28 I.R.B. 4  
96–35, 1996–31 I.R.B. 4  
96–36, 1996–30 I.R.B. 6  
96–37, 1996–32 I.R.B. 4  
96–38, 1996–33 I.R.B. 4  
96–39, 1996–34 I.R.B. 4  
96–41, 1996–45 I.R.B. 4  
96–42, 1996–35 I.R.B. 4  
96–43, 1996–36 I.R.B. 4  
96–44, 1996–38 I.R.B. 4  
96–45, 1996–39 I.R.B. 5  
96–46, 1996–39 I.R.B. 5  
96–47, 1996–40 I.R.B. 7  
96–48, 1996–40 I.R.B. 4  
96–49, 1996–41 I.R.B. 4  
96–50, 1996–42 I.R.B. 4  
96–51, 1996–43 I.R.B. 5  
96–52, 1996–45 I.R.B. 5  
96–53, 1996–47 I.R.B. 4  
96–54, 1996–47 I.R.B. 5  
96–55, 1996–49 I.R.B. 4  
96–56, 1996–50 I.R.B. 7  
96–57, 1996–50 I.R.B. 5  
96–58, 1996–50 I.R.B. 4  
96–59, 1996–50 I.R.B. 4

### Tax Conventions:

1996–28 I.R.B. 36  
1996–36 I.R.B. 6  
1996–40 I.R.B. 8  
1996–50 I.R.B. 8

### Treasury Decisions:

8673, 1996–27 I.R.B. 4  
8674, 1996–28 I.R.B. 7  
8675, 1996–29 I.R.B. 5  
8676, 1996–30 I.R.B. 4  
8677, 1996–30 I.R.B. 7  
8678, 1996–31 I.R.B. 11  
8679, 1996–31 I.R.B. 4  
8680, 1996–33 I.R.B. 5  
8681, 1996–37 I.R.B. 17  
8682, 1996–37 I.R.B. 4  
8683, 1996–44 I.R.B. 9  
8684, 1996–44 I.R.B. 4  
8685, 1996–48 I.R.B. 4

<sup>1</sup>A cumulative list of all Revenue Rulings, Revenue Procedures, Treasury Decisions, etc., published in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.

## Finding List of Current Action on Previously Published Items<sup>1</sup>

Bulletins 1996–27 through 1996–50

\*Denotes entry since last publication

### Revenue Procedures:

#### **67–396**

Modified by  
96–56, 1996–50 I.R.B. 7

#### **80–27**

Modified by  
96–40, 1996–32 I.R.B. 8

#### **87–32**

Modified by  
TD 8680, 1996–33 I.R.B. 5

#### **91–22**

Superseded by  
96–53, 1996–49 I.R.B. 9

#### **92–20**

Modified by  
TD 8680, 1996–33 I.R.B. 5

#### **95–16**

Superseded by  
96–48, 1996–39 I.R.B. 10

#### **95–29**

Superseded by  
96–36, 1996–27 I.R.B. 11

#### **95–29A**

Superseded by  
96–36, 1996–27 I.R.B. 11

#### **95–30**

Superseded by  
96–42, 1996–32 I.R.B. 14

#### **95–46**

Superseded by  
96–48, 1996–39 I.R.B. 10

#### **96–25**

Modified by  
96–58, 1996–50 I.R.B. 4

#### **96–41**

Modified by  
Notice 96–49, 1996–41 I.R.B. 6

#### **96–46**

Supplemented by  
96–51, 1996–47 I.R.B. 10

---

<sup>1</sup>A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1996–1 through 1996–26 will be found in Internal Revenue Bulletin 1996–27, dated July 1, 1996.